

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-1466

EDWARD JOHNSON

APPELLANT

V.

SUPERIOR INDUSTRIES and
CROCKETT ADJUSTMENTS

APPELLEE

Opinion Delivered JUNE 17, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F613227]

REVERSED AND REMANDED

RITA W. GRUBER, Judge

Edward Johnson worked at appellee Superior Industry's chrome plant from May 1997 until its closing in August 2006. In December 2006 he filed a workers' compensation claim for injuries that he contended were related to his employment, and a hearing was held before the administrative law judge on October 23, 2007. Johnson testified that he was forty-four-years old, had begun his employment at Superior's chrome plant on May 28, 1997, and had held jobs in the polishing, janitorial, and rack maintenance departments that required use of his wrists, hands, elbows, arms, shoulders, back, and neck. The law judge, noting that Johnson's strenuous work required continual use of his hands, wrists, and arms, and finding that the medical records set forth objective medical findings of problems with his cervical spine, shoulder area, elbows, and wrists, found that he had proven the compensability of his claim. In a decision of September 12, 2008, the Commission reversed the decision of the law

judge. Johnson now appeals the Commission's denial of his claim, arguing that there were objective findings of injury and that the injuries were caused by his work. We reverse and remand.

Johnson's claim involved carpal tunnel syndrome and gradual-onset injuries to his back and neck, requiring proof that an injury arising arose out of and in the course of employment and that the work-related injury was the major cause of the need for medical treatment. Ark. Code Ann. § 11-9-102(4)(A) and (E) (Supp. 2007). Additionally, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2007). Objective medical evidence is necessary to establish the existence and extent of an injury but not essential to establish the causal relationship between the injury and a work-related accident. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

In reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm those findings if they are supported by substantial evidence, which is evidence a reasonable person might accept as adequate to support a conclusion. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). The findings of the Commission will be upheld unless there is no substantial evidence to support them. *Ark. Dep't of Correction v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Substantial evidence exists only if reasonable minds could have reached the same conclusion

without resort to speculation or conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). Conjecture and speculation, even if plausible, cannot take the place of proof. *Ark. Dep't of Correction v. Glover, supra*. Although the appellate court defers to the Commission on issues involving the weight of the evidence and the credibility of the witnesses, it may not disregard testimony and is not so insulated as to render appellate review meaningless. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

We will not reverse the Commission's decision unless we are convinced that fair-minded people with the same facts before them could not have reached the same conclusions reached by the Commission. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). In a case such as this one, where the Commission denies benefits because a claimant failed to meet his or her burden of proof, the appellate court will affirm if the Commission's decision displays a substantial basis for the denial of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). If reasonable minds could have reached the result shown by the Commission's decision, we must affirm. *Systems Contracting Corp. v. Reeves*, 85 Ark. App. 286, 151 S.W.3d 18 (2004).

Wrist and Hand Injuries

Johnson asserts that there were objective medical findings and proof of causation for his carpal tunnel syndrome. He points to Dr. James Moore's impression that Johnson suffered from "old scapholunate ligament disruption both wrists" and bilateral carpal tunnel

syndrome on December 4, 2006, and to Dr. Moore's note on that date that Johnson first had problems at least a-year-and-a-half earlier when he was flipping heavy racks, hammering, and performing other heavy, repetitive work. Johnson also relies upon Dr. Moore's note ten days later that a nerve conduction test on December 6 revealed bilateral carpal tunnel syndrome and bilateral ulnar entrapment neuropathies across the cubital tunnel.

The Commission's decision included the following evaluation of evidence on the issue of carpal tunnel syndrome:

The claimant was initially treated by Dr. Thorn on November 30, 2005, and at that time Dr. Thorn determined the claimant was suffering from bilateral tendinitis of the wrists and left ulnar neuropathy. Nerve conduction studies were ultimately performed on December 6, 2006, which reflected bilateral Carpal Tunnel Syndrome and bilateral ulnar entrapment neuropathy of the left elbow. As of January 15, 2007, Dr. James Moore had noted that the claimant was starting classes at Northwest Arkansas Community College, his symptoms had improved in the right hand and recommended continued conservative treatment. In his report of March 15, 2007, there is the first notation of pain in the left shoulder and Dr. Moore noted that this occurred while the claimant was working with his keyboard. Dr. Moore ultimately had another set of nerve conduction studies scheduled with Dr. Kaplan. *In his report of June 5, 2007, Dr. Kaplan determined that the nerve conduction studies were normal but suggested possible left-sided cervical radiculopathy. In his report of June 11, 2007, Dr. Moore confirmed that there were no abnormalities in the nerve conduction studies and at that time the plan was to rule out cervical radiculopathy.*

In his report of July 9, 2007, Dr. Kaplan again noted that he found no evidence of Carpal Tunnel Syndrome, nor any evidence of ulnar neuropathy in the left elbow and related the claimant's problems to soft tissue disturbances rather than any neurological disease. *An MRI of the cervical spine administered on July 18, 2007, reflected a straightening of the cervical lordotic curvature and small posterior osteophytes. In his report of August 15, 2007, Dr. Kaplan provided a summary of his evaluation of the claimant and determined that the cervical MRI reflected degenerative changes and*

suggested conservative treatment. He again confirmed that there were no objective findings of Carpal Tunnel Syndrome.

At that point in time the claimant returned to the Ozark Orthopaedic Clinic and was seen by Dr. Coker on August 31, 2007, who referred the claimant to a hand specialist. The claimant was seen by Dr. Benafield on September 24, 2007. It was Dr. Benafield's impression that the claimant was suffering from bilateral Carpal Tunnel Syndrome, bilateral cubital tunnel syndrom and bilateral scapholunate ligament insufficiency.

....

While the claimant did in fact have positive nerve conduction studies in December of 2006, these studies were normal by June 5, 2007. The most obvious explanation is that the respondent's plant closed down in August of 2006. The claimant admitted that the last day he worked for the respondent employer was on August 4, 2006. Presently the claimant is taking classes at Northwest Arkansas Community College and doing foster care out of his home for Alcom. The claimant testified that in addition to his classes 6 hours a week, he provides foster care for a gentleman who stays with him 24 hours a day, 7 days a week. He also provides foster care to another gentleman for 34 hours a week. Clearly by June of 2007 the claimant did not have any measurable and objective findings of Carpal Tunnel Syndrome on either wrist.

(Emphasis added.)

The weight and interpretation of the medical evidence are matters for the Commission. *Pyle v. Woodfield, Inc.*, ___ Ark. App. ___, ___ S.W.3d ____ (Apr. 8, 2009). Questions concerning the credibility and the weight to be given witnesses' testimony are also within the exclusive province of the Commission. *Gaither Appliance v. Stewart*, 103 Ark. App. 276, ___ S.W.3d ____ (2008).

In the present case, substantial evidence does not support the denial of Johnson's claim for a compensable injury to his hands and wrists on the basis of a normal nerve

conduction test performed ten months after his repetitive and hand-intensive work ended. The Commission failed to acknowledge that, despite this June 2007 test, Dr. Kaplan did not rule out carpal tunnel syndrome in July or August 2007. Focus upon the lack of objective findings in the June test, as the dissenting commissioner points out, ignores prior objective findings of carpal tunnel syndrome in this case and ignores Commission Rule 37, which states that nerve conduction studies can reflect temporary improvement in cumulative trauma injury when a claimant enters into a period of inactivity.

We hold that reasonable minds could not conclude that Johnson's carpal tunnel syndrome was not a compensable injury established by objective medical findings. We reverse and remand this case for the Commission for a decision in keeping with this decision.

Neck, Left Shoulder, and Elbow Injuries

Johnson also asserts that objective findings support his claim for injuries to his neck, left shoulder, and elbows, and that the cause of injury was his work. He points to the finding of disc bulges on his MRI, asserting that they were caused by the trauma of his work. He also points to Dr. Kaplan's August 15, 2007 note that a June 2007 EMG "pointed toward a left-sided cervical radiculopathy . . . consistent with his radicular symptoms down the left neck to the left shoulder and arm area." Johnson asserts that he had neither cervical problems nor radicular symptoms when he was hired, and that only after years of doing his job did he develop these symptoms. As evidence of causation, he points to his testimony that he "flipped" 500-pound racks with a co-worker and to Dr. Kaplan's July 9, 2007 note explaining

that Johnson's job had "a tremendous amount of physical wear and tear" and "a lot of physical strain" on his hands and arms.

The Commission observed that the respondents authorized the August 15, 2007 MRI after the nerve conduction studies performed by Dr. Kaplan were normal and he raised the possibility of cervical radiculopathy. The Commission noted that the MRI, although reflecting degenerative changes and disc bulges, showed no cord compression or definite radiculopathy. The Commission found that there was no connection between Johnson's employment and a straightening of the lordotic curve or osteophytes. The Commission noted that there was no mention of a cervical spine problem when his claim was first filed and that suggestion of such an injury did not arise until Dr. Kaplan attempted to determine the origin of the numbness in Johnson's hands. Likewise, the Commission noted an absence of finding of left-shoulder abnormality, or of any testing or suggestion of right-shoulder injury. It noted that Dr. Moore's determination on December 4, 2006, of Johnson's old scapholunate ligament disruption with both wrists had not been linked to other injuries. It observed that the first notation of Johnson's left-shoulder pain was on March 15, 2007, about seven months after his job with Superior ended; that the pain was attributed to his working on a keyboard while going to school; and that he had not used a keyboard while working for Superior. The Commission found that the cervical MRI of July 18, 2007, showed only degenerative changes unrelated to Johnson's employment.

Johnson argues on appeal, echoing the position of the dissenting commissioner, that

the Commission confused the element of objective findings, which are required to show the existence of injury, with the element of a causal connection between employment and injury. His point is well-taken. We again note that objective medical evidence is not essential to establish the causal relationship between the injury and the work-related accident. *Wal-Mart Stores, Inc. v. VanWagner, supra*. Because the Commission failed to fully assess Johnson's testimony and the medical history regarding a causal relationship between his work and symptoms related to his neck, left shoulder, and elbow injuries, we remand this issue to the Commission for further explanation and findings.

Reversed and remanded.

ROBBINS and BROWN, JJ., agree.